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DATE: 25 January 2019

YOUR REF: 265422/2.JPOT

OUR REF: C1/2018/1750

Dear Sir/Madam,

Re: The Queen on the application of Plan B. Earth and Ors -v- The Secretary of State for Business and Energy and Industrial Strategy and Anr

I enclose a copy of the order refusing Permission To Appeal The Decision To Refuse Permission To Apply For Judicial Review.

This decision is final. There is no right to a review or reconsideration of the decision. Pursuant to section 54(4) of the Access to Justice Act 1999, there is no further right of appeal in these circumstances.

Yours faithfully,

In Court Support Team

In accordance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 that came into effect from 25th May 2018 if you would like to know more about how HMCTS handles your personal data please visit our website at www.gov.uk/hmcts. If you require a hard copy of the privacy notice please contact the court.

With effect from 1st February 2018 the Case Progression Section will only answer the phones between the hours of 10am – 12pm and 2pm – 4pm.

PTA Template 269E1 - OCT16 – JR (Admin)

IN THE COURT OF APPEAL, CIVIL DIVISION

(CS:17.10.18)

[SEAL]

REF: **C1/2018/1750**

The Queen, on the application of

The Queen on the Application of Plan B. Earth and Others –v– **The Secretary of State for Business and Energy and Industrial Strategy and Another**

ORDER made by the Rt. Hon. Lady Justice Asplin

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, against the refusal of the High Court to grant permission to apply for judicial review

Decision: application for stay refused.

Permission to appeal/apply for judicial review – REFUSED.

Permission to appeal: Refused

OR

Permission to apply for judicial review: Granted in part (delete as necessary)

Where permission to apply for judicial review is granted, the application should be returned to the Administrative Court ☐

OR

There are special reasons (set out below) why the application should be retained in the Court of Appeal ☐

Reasons

Having considered all the relevant circumstances, a stay in these proceedings in order to delay the consideration of the application for permission to appeal is refused. It is not clear that these proceedings are directly related to the applications in CO/3149/2018 and CO/3147/2018 to be heard in March 2019, despite a similarity in arguments raised. This application for judicial review concerns particular decisions taken in October 2016and January 2018, not to amend the 2050 target at present, with which the other applications are not directly concerned. There are no solid grounds for a stay therefore nor any submission that without a stay irremediable harm will be suffered.

The permission to appeal/permission to apply for judiciary review has no real prospect of success and there is no compelling reason why it should be heard by the Court of Appeal.

Ground 1 – frustrating legislative purpose. There is no real prospect of success in this regard. The Judge dealt with this matter [36] – [43] of his judgment. Those paragraphs contain no error of law. Sections 2 and 6 Climate Change Act 2008 contain discretions and not a duty and are subject to the duty to consult contained in sections 3 and 7. It is not arguable that a failure to exercise the discretion to amend the 2050 target at present is an unlawful exercise of that discretion being contrary to the legislative purpose of the statute.

Ground 2 – misunderstood the Paris Agreement. The Judge deals with this ground at [25] - [28] and [44] and [45] of his judgment, albeit framed on the basis that it was the Committee on Climate Change which misunderstood the Paris Agreement. Those paragraphs contain no error of law. It is not arguable that either the Secretary of State or the Committee on Climate Change misunderstood the Paris Agreement and article 2(a) in particular.

Ground 3 – failed to recognise that the Secretary of State had misunderstood the advice of the Committee on Climate Change. This ground has no real prospect of success. The relevant advice and the basis of the Secretary of State's position are set out in summary at [25] – [28]. It is not arguable that the Secretary of State misunderstood the advice given.

Ground 4 – section 6 Human Rights Act 1998. Although it is arguable that governmental response to the need for environmental protection engages human rights in general, in the light of the fact that grounds 1 – 3 have no real prospect of success, the margin of appreciation and the reasons set out under Ground 1 above, the same is true of this ground. The Judge's conclusion at [49] contains no error of law. In the

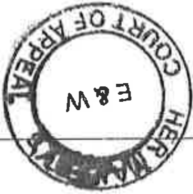
Ground 5 – public sector equality duty. This ground has no real prospect of success. It is not arguable that the duty has been breached.

Ground 6 - irrationality. This ground has no real prospect of success. See the reasons set out under Grounds 1 – 5 above. Further, the international leadership, inconsistency with Paris Agreement and delay arguments are all premised upon a construction of the Paris Agreement and the Climate Change Act 2008 considered under Grounds

1 and 2.

Ground 7 – wrong in principle for permission to be refused – duty of candour. This ground adds nothing. It has no real prospect of success.

Where permission has been granted, or the application adjourned, any directions to the parties (including, if appropriate, any abridgement of the 35 day time limit for filing evidence provided for in CPR 54.14)



By the Court

Signed: S. J. Asplin

Date: 22.01.2019

Notes

(1) Rule 52.6(1) provides that permission to appeal may be given only where –
  a) the Court considers that the appeal would have a real prospect of success; or
  b) there is some other compelling reason why the appeal should be heard.

(2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.

(3) Rule 52.15 provides that, in granting permission, the Court of Appeal may grant permission to appeal or permission to apply for judicial review. Where the Court grants permission to apply for judicial review, the Court may direct that the matter be retained by the Court of Appeal or returned to the Administrative Court.

Case Number: **C1/2018/1750**

DATED 22ND JANUARY 2019
IN THE COURT OF APPEAL

ORDER

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